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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,636	09/18/2003	Nicholas Wynne	7659-D	8971
7590	05/18/2004			
Alan F. Meckstroth JACOX, MECKSTROTH & JENKINS Suite 2 2310 Far Hills Building Dayton, OH 45419-1575			EXAMINER RHEE, JANE J	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/666,636	WYNNE, NICHOLAS	
	Examiner	Art Unit	
	Jane J Rhee	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 26-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 29-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-22 of U.S. Patent No. 5900299. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the present invention and U.S. Patent 5900299 claimed a vacuum insulated article comprising a bag of flexible gas impermeable film, the bag having a portion sealed to form an integral tubular evacuation portion, a core of porous material within the bag, the bag forming an air tight enclosure around the core, the bag and the core adapted to be evacuated with a tubular nozzle projecting into the tubular evacuation portion of the bag and connected to a vacuum pump, and the tubular evacuation portion of the bag being sealed after the core and the bag are evacuated to a predetermined vacuum level. Also, both the present invention and U.S. Patent 5900299 claimed a plurality of evacuation grooves with in an outer surface of the core of

porous material, and each of the groove having a depth greater than its width.

Furthermore, both the present invention and U.S. Patent 5900299 claimed a porous spacer member that is retained within the cavity for preventing contact of the tubular nozzle with the foam core, wherein the core further comprises an open end chamber.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26,28-30,32,34,36,38 are rejected under 35 U.S.C. 102(b) as being anticipated by Bridges et al. (5252408).

Bridges et al. discloses a vacuum insulated article comprising a bag of flexible gas impermeable film (col. 8 line 40-45), the bag having a portion sealed to form an integral tubular evacuation portion (col. 8 line 45-48), a core of porous material within the bag (col. 10 line 23-30), the bag forming an air tight enclosure around the core, the bag and the core adapted to be evacuated with a tubular nozzle projecting into the tubular evacuation portion of the bag and connected to a vacuum pump, and the tubular evacuation portion of the bag being sealed after the core and the bag are evacuated to a predetermined vacuum level (col. 8 lines 48-51). Bridges et al. discloses that the end surface of the core defines a cavity in opposing relation to the tubular evacuation portion of the bag, and a porous spacer member is retained within the cavity (figure 5 number 24, col. 8 line 62). Bridges et al. discloses a layer of foam material on the bag (figure 3

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number 40). Bridges et al. discloses that the layer of foam extends completely around the bag (figure 3 number 40).

Bridges et al. discloses a vacuum insulated article comprising a core box of porous material (col. 10 lines 25-30 and figure 2 number 22) and defining an open end chamber (figure 4 the circled area), a partially sealed bag of flexible gas impermeable film (col. 8 line 42), the core box positioned within the bag (figure 2 number 22 and 12 and 14), the bag and the core box being evacuated to a predetermined vacuum level causing the bag to enclose the core box tightly with the bag lining the chamber, the bag being sealed after the core box and the bag are evacuated (col. 8 lines 48-51). Bridges et al. discloses a vacuum insulated article comprising a closed end portion (figure 2 number 12) and an evacuation tube connected to the bag (figure 5 number 18), the core box positioned within the bag (figure 4 number 22) with the bag sealed to form an air tight enclosure around the core box (figure 4 number 30 and 32), the bag and core box adapted to be evacuated with a tubular nozzle projecting into the evacuation tube and connected to a vacuum pump (col. 8 lines 49-59) and the evacuation tube being sealed after the core box and bag are evacuated to a predetermined vacuum level (col.7 line 2). Bridges et al. discloses that the bag is positioned with a closed end portion over lying the open end change with sufficient length to line the chamber (col. 8 lines 48-51).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 27,33,37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bridges et al. in view of De Vos et al. (5843353).

Bridges et al. discloses the vacuum insulated article described above. Bridges et al. fail to disclose a plurality of evacuation grooves within an outer surface of the core of porous material and each groove having a depth greater than its width. De Vos et al. teaches a plurality of evacuation grooves within an outer surface of the core of porous material and each groove having a depth greater than its width (figure 3a) for the purpose of obtaining the desired ultimate construction after evacuation (col. 7 line 65).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide a plurality of evacuation grooves within an outer surface of the core of porous material and each groove having a depth greater than its width in order to obtain the desired ultimate construction after evacuation (col. 7 line 65) as taught by De Vos et al.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bridges et al in view of Bartle Sr. (4745730).

Bridges et al. discloses the vacuum insulated article described above. Bridges et al. fail to disclose a resilient O-ring adapted to surround and contract the tubular nozzle for engaging the surrounding of the tubular evacuation portion of the bag to form a fluid tight releasable coupling. Bartle Sr. teaches a resilient O-ring to surround and contract the tubular nozzle for the purpose of providing an improved sealing means (col. 3 line 59-60).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide a resilient O-ring to surround and contract the tubular nozzle in order to provide an improved sealing means (col. 3 line 59-60).

6. Claims 35 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Bridges et al. (5252408).

Bridges et al. discloses the vacuum insulated article described above. Bridges et al. fail to disclose that the bag has a length generally twice the corresponding length of the core box.

It would have been an obvious matter of design choice to provide the bag with a length generally twice the corresponding length of the core box, since such a modification would have involved a mere change of size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
May 11, 2004



NASSER AHMAD
PRIMARY EXAMINER